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U.S. Wins WTO Case on Sea Turtle Conservation

WASHINGTON--A World Trade Organization (WTO) dispute settlement panel today released a report finding that the United States' implementation of its sea turtle protection law is fully consistent with WTO rules and complies with earlier recommendations of the WTO Appellate Body. In October 2000, Malaysia challenged the U.S. implementation of the Appellate Body Report. Malaysia, along with three other countries, had brought an initial challenge to the law (known as the "shrimp-turtle" law) in 1996.

"We are gratified, but not surprised, that the dispute settlement panel has found in favor of the United States," said U.S. Trade Representative Robert Zoellick. "We have long maintained that the WTO Agreements recognize the legitimate environmental concerns of Members, and this report confirms our view. I am pleased that the arguments we have made in this and other disputes have contributed to the body of cases illustrating the WTO's sensitivity to environmental concerns."

The U.S. law restricts imports of shrimp caught in a way that harms endangered sea turtles. In a 1998 report, the Appellate Body agreed with the United States that the law does not violate WTO obligations because it is covered by an exception to WTO rules for measures relating to the conservation of exhaustible natural resources. However, the Appellate Body found that the United States had unjustifiably discriminated between exporting countries in applying the law. The United States complied with the Appellate Body findings by modifying implementation of its law in a manner that both enhanced sea turtle conservation and addressed the unfair discrimination identified by the Appellate Body.

In the report released today, the dispute settlement panel agreed with the United States that it had remedied any unfair discrimination. The panel took note of the revisions to the shrimp-turtle guidelines that provide more due process to exporting nations. The panel also recognized the good faith efforts of the United States both to negotiate a sea turtle conservation agreement with the Indian Ocean and

South-East Asian nations affected by the law, and to provide technical assistance in the adoption of fishing methods that do not cause incidental harm to endangered sea turtles.

Ambassador Zoellick also commented that “this case follows the report in the recent asbestos case, which similarly confirms the WTO’s sensitivity to health and safety concerns. These two cases show that WTO rules are consistent with high levels of safety and environmental protection.” In March, 2001, the WTO Appellate Body found that France’s ban on imports of asbestos, based on health concerns, was consistent with WTO rules. The United States played an active role in that dispute, appearing as a third party in support of the WTO-consistency of the French ban.

Malaysia may appeal the panel’s report to the WTO Appellate Body, a process that takes no more than 90 days.

The panel’s report will be posted on both USTR’s website (www.ustr.gov) and the WTO website (www.wto.org). USTR’s briefs submitted to the panel in the case are also available at www.ustr.gov/enforcement/briefs.

Background

Sea turtles are an ancient and far-ranging species, with migratory patterns extending throughout the oceans of the world. Due to the harvesting of sea turtles and their eggs and to accidental mortality associated with shrimp trawling and other fishing operations, all but one species of sea turtles have become threatened or endangered with extinction throughout all or part of their range.

Researchers have developed special equipment, known as the Turtle Excluder Device, or TED, that virtually eliminates accidental deaths of sea turtles in shrimp trawl nets. For more than a decade, the United States has required that U.S. shrimp fishermen employ TEDs. Over a dozen countries around the globe also require that their shrimp trawlers employ TEDs. Experience has shown that the use of TEDs, combined with other elements of an integrated sea turtle conservation program, can stop the decline in sea turtle populations and will, over time, lead to their recovery.

The U.S. law at issue -- Section 609 of Public Law 101-162 -- restricts imports of shrimp harvested with fishing equipment, such as shrimp trawl nets not equipped with TEDs, that results in incidental sea turtle mortality. It thereby avoids further endangerment of sea turtles.

In October 1996, India, Malaysia, Thailand and Pakistan challenged the U.S. law under WTO dispute settlement procedures, claiming that it was inappropriate for the United States to prescribe their national conservation policies. In April 1998, a panel found that the U.S. measure was inconsistent with Article XI of the General Agreement on Tariffs and Trade (GATT), which provides that WTO Members shall not maintain import restrictions. The United States had maintained that Section 609 fell within the exception under Article XX(g) of the GATT that permits import restrictions relating to the conservation of an exhaustible natural resource. Accordingly, the United States appealed the panel findings to the WTO Appellate Body.

In October 1998, the Appellate Body reversed the findings of the dispute settlement panel. It agreed with the United States that the U.S. law is covered by the GATT exception for measures relating to the conservation of exhaustible natural resources, but found that the United States had implemented the law in a way that resulted in unfair discrimination between exporting nations. The Appellate Body also agreed with the United States that the GATT and all other WTO agreements must be read in light of the preamble to the WTO Agreement, which endorses sustainable development and environmental protection. The Appellate Body confirmed that WTO members may adopt environmental conservation measures such as the U.S. law, so long as they are administered in an even-handed manner and do not amount to disguised protectionism.

In November 1998, the United States announced that it would comply with the Appellate Body report in a manner consistent with its firm commitment to the protection of endangered sea turtles. The United States and the other parties to the dispute reached agreement on a 13-month compliance period, which ended in December 1999.

U.S. compliance steps included revised Department of State guidelines for implementing Section 609, which were issued after providing notice and an opportunity for public comment. The revised guidelines were designed to increase the transparency and predictability of decisionmaking under Section 609 and to afford foreign governments a greater degree of due process.

U.S. compliance steps also included efforts to launch the negotiation of a sea turtle conservation agreement with the governments of the Indian Ocean region on the protection of sea turtles. The United States provided financial assistance to facilitate the attendance of representatives from developing countries at such negotiations, and considerable progress has been made.

The United States has also offered technical training in the design, construction, installation and operation of TEDs to any government that requests it. Since the adoption of the Appellate Body report, the United States has provided such assistance and training to a number of governments and other organizations in the Indian Ocean and South East Asia region.

Despite the U.S. compliance steps, in October 2000, Malaysia – but none of the other original complainants – requested the re-establishment of the original panel to examine whether the United States had in fact complied with the Appellate Body findings. The panel concluded that “the United States has made a *prima facie* case that Section 609 is now applied in a manner that no longer constitutes a means of unjustifiable and arbitrary discrimination, as identified by the Appellate Body in its Report,” and it noted that Malaysia did not submit sufficient evidence to the contrary.

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